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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,653	09/17/2003	Matthew J. Kruse	4903-1	8490

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SHERIDAN-ROSS PC  
1560 BROADWAY  
SUITE 1200  
DENVER, CO 80202

EXAMINER

LEV, BRUCE ALLEN

ART UNIT PAPER NUMBER

3634

DATE MAILED: 10/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/666,653

Applicant(s)

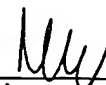
KRUSE, MATTHEW J.

Examiner

Bruce A. Lev

Art Unit

3634



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/1/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

BRUCE A. LEV  
PRIMARY EXAMINER



## DETAILED ACTION

### *Drawings*

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "*locking mechanism...fixing the location of the offset device*", as in claim 12, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The form and legal phraseology often used in patent claims, such as "***means***", in line 5, and "said," should be avoided.

The language should avoid using phrases which can be implied, such as, "***The present invention***", in lines 1 and 2.

### ***Claim Rejections - 35 USC § 112***

***Claims 1-10 and 12 are rejected*** under 35 U.S.C. ***112***, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As concerns claims 1 and 7 there is an inconsistency between the language in the preamble and certain portions in the body of the claims, thereby making the scope of the claims unclear. For example, the preamble clearly indicates that the subcombination of a "ladder" is being claimed with the functional recitation of the "ladder" being used "for selectively positioning against a vertical surface of a structure". However, the body of the claim positively recites the "structure", e.g., "wherein said vertical surface interfaces are positioned on the...structure" (claim 1, lines 16-17); "the latter is positioned...a distance from...the structure (claim 1, lines 18-19); and "the ladder is positioned a...distance...from the structure" (claim 7, lines 18-19), which indicates the claims as being drawn to a combination of the "ladder" and the "structure". Therefore, the applicant is required to clarify what the claims are intended to be drawn

to, i.e., either the “ladder” alone or in combination with the “structure”, and to present the claims with the language which is consistent with the invention. The applicant should note that “*adapted to be*” language may be appropriate if claiming the “ladder” alone (i.e., “adapted to be secured to”).

As concerns claims 1 and 7, the phrase “the ladder is tilted at a...angle” is vague and indefinite since it is unknown as to what the ladder is tilted with respect to. Further, in claim 1, the phrase “latter”, in line 18, is not understood.

As concerns claims 2 and 9, a range within a range is improper (i.e., 110 to 120, preferably 110). Further, the use of the phrase “about “ before a range is also improper. Further, the term “preferably” is improper claim language.

As concerns claims 3 and 7, the use of the phrase “or” is improper.

As concerns claim 12, the phrase “fixing the location of said offset device” is vague and indefinite since it is unclear as to what the device is being fixed to.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

***Claims 1, 3, and 7 are rejected*** under 35 U.S.C. ***102(e)*** as being anticipated by ***Widurski 6,408,983***.

***Widurski sets forth*** a ladder with an offset device 10 comprising left and right structural members; a plurality of rungs; left and right tubular extension members (inclusive of members 20) positioned at relative angles to respective structural members (via members 22) and bolted thereto; left and right vertical surfaces (part of members 30) adapted for contacting surfaces of a structure; and a transverse support member 32.

***Claims 11-13 are rejected*** under 35 U.S.C. ***102(b)*** as being anticipated by ***Laug 6,250,424***.

**Laug sets forth** an offset device (best illustrated in Figure 6) comprising left and right angled extension members 4; an extension device including left and right tubular members (inclusive of members 3 and 7), a transverse support member 6; left and right vertical surfaces (inclusive of members 12), and an angular surface interface (inclusive of members 11) between the tubular members; locking mechanism between the extensions and a ladder; and footings (viewed as inclusive of the roller members).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

***Claims 2 and 9 are rejected*** under 35 U.S.C. ***103(a)*** as being unpatentable over ***Widurski***

***Widurski*** sets forth the ladder with an offset device, as advanced above, except for the angular values of the extension members. However, it is well established by case law that where general conditions are known in the art, it is **not inventive to discover the optimum or workable values**, accordingly, the examiner takes the position that since no engineering advantages nor new or unexpected results have been set forth for selecting these particular values over ones that are known, these limitations

are considered to be an obvious **matter of design choice** determined through routine experimentation and optimization.

***Claim 4 is rejected*** under 35 U.S.C. **103(a)** as being unpatentable over ***Widurski in view of Husband 2003/0098202***.

***Widurski*** sets forth the ladder with an offset device, as advanced above, except for the left and right gussets interconnecting the extension members to respective structural members. However, ***Husband teaches*** the use of gussets 72 to interconnect extension members to respective structural members. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ladder and offset device of ***Widurski*** by incorporating gussets, as taught by ***Husband***, in order to strengthen the apparatus and increase safety thereof.

***Claims 5, 8, and 10 are rejected*** under 35 U.S.C. **103(a)** as being unpatentable over ***Widurski in view of Uridel et al 2001/0035313***.

***As concerns claims 5 and 10, Widurski*** sets forth the ladder with an offset device, as advanced above, except for the angled surface interface member. However, ***Uridel et al teaches*** the use of an angled surface interface member (inclusive of members 15). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ladder and offset device of ***Widurski*** by incorporating an angled surface interface member, as taught by ***Uridel et al***, in order to



provide means to securely contact an angled surface smaller in dimension than the distance between the extension members.

**As concerns claim 8, *Widurski*** sets forth the ladder with an offset device, as advanced above, except for the stabilization member. However, ***Uridel et al teaches*** the use of stabilization member (inclusive of member 5). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ladder and offset device of *Widurski* by incorporating a stabilization member, as taught by *Uridel et al*, in order to provide means to more securely removably attach the offset member to the ladder structural members.

***Claim 6 is rejected*** under 35 U.S.C. **103(a)** as being unpatentable over ***Widurski in view of Vrolkys 5,855,252***.

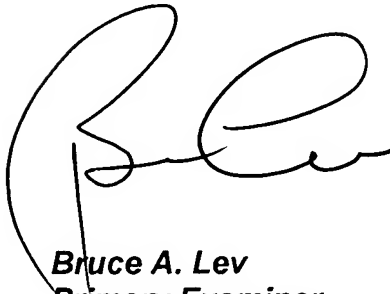
***Widurski*** sets forth the ladder with an offset device, as advanced above, except for the angle between the extension members and the structural members being selectively adjustable. However, ***Vrolkys teaches*** attaching extension members 68 to the structural members as being selectively adjustable (as illustrated in figure 6). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ladder and offset device of *Widurski* by attaching the extension members to the structural members as being selectively adjustable, as taught by *Vrolkys*, in order to provide means to adjust the angle between the extension members and the structural members to thereby adjust the angle of the ladder with respect to a structural surface.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce A. Lev whose telephone number is (703) 308-7470.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

10/07/2004

A handwritten signature in black ink, appearing to read 'B. Lev', with a large loop on the left side.

**Bruce A. Lev**  
**Primary Examiner**  
**Group 3600**